Windsor Castle Health Care Facilities, Inc. (formerly known as Parkview Nursing Home, Inc.) *and* New England Health Care Employees Union, District 1199, SEIU, AFL–CIO and 1115 Nursing Home and Service Employees Union, a Division of 1115 District Council, H.E.R.E., AFL–CIO,[1] Party in Interest

1115 Nursing Home and Service Employees Union, a Division of 1115 District Council, H.E.R.E., AFL–CIO *and* New England Health Care Employees Union, District 1199, SEIU, AFL–CIO

Windsor Castle Health Care Facilities, Inc. (formerly known as Parkview Nursing Home, Inc.) *and* Harriet D. Banks

1115 Nursing Home and Service Employees Union, a Division of 1115 District Council, H.E.R.E., AFL–CIO *and* Harriet D. Banks. Cases 34–CA–4597–1, 34–CA–4597–2, 34–CA–4760, 34–CA–5070, 34–CB–1284, and 34–CB–1413

March 4, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On July 31, 1992, Administrative Law Judge Robert T. Snyder issued the attached decision. The Respondents filed exceptions and supporting briefs. The General Counsel and the Charging Party filed reply briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions, to modify the remedy,[3] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Windsor Castle Health Care Facilities, Inc., New Haven, Connecticut, its officers, agents, successors, and assigns, and the Respondent 1115 Nursing Home and Service Employees Union, A Division of 1115 District Council, H.E.R.E., AFL–CIO, Westbury, New York, its officers, agents, and representatives shall take the action set forth in the Order.

[1] The Respondent Union's name has been amended pursuant to its unopposed motion.

[2] The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent Windsor Castle Health Care Facilities implies that some of the judge's rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the judge's decision and the entire record, we are satisfied that any such contentions are without merit.

The judge found that the unit consisted of 108 employees. He also properly found that the five 1115 paid organizers, who were temporarily at the Respondent Windsor's facility solely in furtherance of Windsor's unlawful scheme to recognize 1115, should not be counted as part of the unit. He inadvertently failed, however, to subtract these five from his count of 108 unit employees, leaving 103. Assuming for argument's sake that the 48 cards designating 1115 (excluding the cards of the 5 organizers) were not otherwise tainted by Windsor's unlawful assistance, we note that 1115 still had less than a majority (48 out of 103) of cards.

Member Oviatt notes that even if the five organizers' activities at the Respondent's facilities were not in furtherance of the Respondent's 8(a)(2) conduct, they would still not be included in the unit for voting purposes because, in view of the temporary nature of their employment, they would not share a community of interest with the other employees. See *Multimatic Products*, 288 NLRB 1279, 1316 (1988). Cf. *Sunland Construction Co.*, 309 NLRB 1224 (1992), which involved the entirely different question of whether, apart from voter eligibility, union organizers are protected under Sec. 7.

[3] Backpay is based on *F. W. Woolworth Co.*, 90 NLRB 289 (1950).

William O'Connor, Esq., for the General Counsel.
Morris Tuchman, Esq., for Respondent Employer.
Richard M. Greenspan, P.C., for Respondent Union.
John M. Creane, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT T. SNYDER, Administrative Law Judge. This case was tried before me on February 5, 6, and 7 and March 20 and 21, 1991, in Hartford, Connecticut.

The consolidated amended complaint alleges that Windsor Castle Health Care Facilities, Inc. (formerly known as Parkview Nursing Home, Inc.) (Windsor Castle or Parkview) rendered aid, assistance, and support to 1115 Nursing Home and Hospital Employees Union, a Division of 1115 Joint Board (Local 1115 or 1115), in violation of Section 8(a)(1) and (2) of the Act, and granted recognition to and entered into a collective-bargaining agreement with Local 1115 in a unit of its employees at a time when Local 1115 did not represent an uncoerced majority of the employees in the unit, in violation of Section 8(a)(1) and (3) of the Act. In other paragraphs of the consolidated complaint, Windsor Castle is alleged to have threatened employees with discharge if they refused to become members of, and execute dues-checkoff authorizations on behalf of Local 1115 in violation of Section 8(a)(1), and to have discharged employees at the request of, Local 1115 because they refused to pay dues to, or join, or execute a dues-checkoff authorization on behalf of Local 1115, in violation of Section 8(a)(1) and (3) of the Act.

Still other paragraphs of the complaint alleging Windsor Castle's unlawful interrogation of and threats against certain named employees concerning their honoring a subpoena at and giving testimony before the National Labor Relations

Board and unlawfully interrogating, threatening, warning, suspending, and discharging them because they engaged in concerted activities on behalf of the Charging Union, New England Health Care Employees Union, District 1199, SEIU, AFL–CIO (District 1199 or 1199) were settled pursuant to a settlement agreement entered between General Counsel and Windsor Castle and approved by me during the course of the hearing, and severed from the instant proceeding. That agreement specifically preserved General Counsel's right to use the evidence obtained by it in the investigation of the instant cases, much of which was presented on the record before me, in support of the remaining allegations.

The allegations of the consolidated complaint against Local 1115 include its threats to discharge employees if they refused to execute dues-checkoff authorizations, informing employees that Windsor Castle was a closed shop, and receiving assistance and support by accepting moneys which Windsor Castle deducted from wages of unit employees, in violation of Section 8(b)(1)(A) of the Act, and requesting and causing Windsor Castle to discharge certain named employees because of their refusal to pay dues or become and remain members of Local 1115 pursuant to the union-security provision contained in the contract it entered with Windsor Castle, in violation of Section 8(b)(2) of the Act.

Both Respondents denied the conclusionary allegations of the complaint.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. General Counsel, Respondents Windsor Castle, and Local 1115 and Charging Union District 1199 have each filed posttrial briefs, each of which has been carefully considered. On the entire record in the case, including my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Windsor Castle, a Connecticut corporation with an office and place of business in New Haven, Connecticut (the New Haven facility), has at all times material herein been engaged as a health care institution in the operation of a nursing home providing inpatient medical and professional care services for the elderly and infirm. During the 12-month period ending June 30, 1990, in the course and conduct of its business operations Windsor Castle derived gross revenues in excess of $100,000, and purchased and received at the New Haven facility goods, products, and materials valued in excess of $5000 directly from entities located outside the State of Connecticut. Respondent Windsor Castle admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Respondents admit, and I also find, that Respondent Local 1115 and District 1199 are each a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background Facts*

On June 1, 1989, Windsor Castle acquired Parkview Manor Nursing Home and began operations at the New Haven facility. Its principal owner is Nelson Tuchman, whose brother, Morris Tuchman, is the attorney for Windsor Castle in this proceeding. Nelson Tuchman is also chief executive officer for Winthrop Health Care (Winthrop), located nearby in New Haven. Israel Fogel is both executive director of Windsor Castle and administrative consultant to Winthrop Health Care.

District 1199 was representing employees at a separate facility in New Haven that Winthrop acquired in June 1985. Winthrop fired some of these employees and District 1199 reacted with a community based campaign to pressure Winthrop into recognizing the Union and rehiring the employees and issued a 10-day strike notice. Jerry Brown, District 1199 president, negotiated with Nelson Tuchman by telephone and an agreement was reached to rehire the terminated employees and with District 1199 prior to the strike.

District 1199 also had sought unsuccessfully, over the years, to organize the employees at the New Haven facility prior to its purchase by Windsor Castle.

B. *Initial Employee Attempts to Organize for District 1199*

Lamarra Davis, a certified nursing assistant (CNA) commenced having discussions with other employees about bringing a union to the New Haven facility after the change in ownership from Parkview to Windsor Castle. In September 1989[1] she spoke to a few friends, among them, Latania Slerge, who knew of District 1199. Slerge agreed to, and did, contact District 1199 in New York. She learned that to get that Union at the facility the employees needed a majority of signatures on a petition. Slerge prepared a handwritten petition and both she and Davis circulated it among some employees on their shift, obtaining the signatures of seven other employees in addition to their own. The petition read at the top ''If you would like a Union sign for 1199.'' The signings took place on September 19 and 20.

Probably toward the end of September Davis had an introductory conversation with Anna Maxwell, her supervisor and a stipulated statutory supervisor, about getting a union into the facility. Later, on October 5, Davis told Maxwell that petitions were going around for a union to get started, that she had one but she was confused at the time because cards were being passed out for Local 1115 on that day also, and she and other employees were in the process of getting a union, 1199. Maxwell told her to be careful.

On October 10, District 1199 organizers leafletted outside the New Haven facility as employees came to work.

C. *The Organizing Campaign and Recognition of Local 1115*

Israel Fogel testified that in September 1989 Windsor Castle was encountering difficulty in staffing CNAs, among other employees, at its New Haven facility. For the quarter ending September 30, a certain percentage of the total work hours of its missing aides were supplied by agencies under a pool arrangement, with the assigned aides' payroll costs being met by the agencies and Windsor Castle reimbursing them and in turn being reimbursed by the State for the costs involved. It was not uncommon for nursing homes in the State to use such agencies with costs reimbursed by the

[1] All dates shall have reference to the year 1989 unless otherwise noted.

State. In August and Steptember, Windsor Castle ran newspaper ads seeking employees, among them, CNAs.[2]

Toward the end of September, Fogel also spoke to George Suarez, Respondent's head of housekeeping and laundry,[3] about its staffing problems. He asked Suarez if he could get some qualified staff. Within a short time Suarez informed Fogel that some people were going to come up to Windsor Castle on Monday of the following week and Fogel in turn informed Joan McSherry, director of nursing services, that four or five people would be coming up from New York for employment. According to Fogel, they were to be permanent employees.

In seeking employees, Suarez contacted Pat Berry, Local 1115 business representative, to recruit them. According to Nathanial Hall, Local 1115 divisional coordinator, Berry told him in his office in the presence of Raul Aldrich, Local 1115's vice president, of a facility he called Parkview in New Haven that needed people to work there and which was unorganized at that particular time. As a result of this conversation Local 1115 gathered people together and sent them up to New Haven to get jobs and to organize the facility. The responsibility to achieve this goal was between Pat Berry and Sandy Moore, who was employed at the time by Local 1115 as an organizer. Hall exercised supervision in seeing to it that the individuals assigned actually went to Parkview and in checking the membership cards actually obtained from employees there.

At 7 a.m. on October 2, five individuals arrived together from New York, appearing to seek employment, four as nurses aides, at the New Haven facility. They were Sandy Moore, Norma Michelle, Uvonne Lennon, Lydie Paul and Henry St. Paul. Moore had been employed as a Local 1115 organizer since July 24. Moore and one of the four had also previously worked at Rego Park Nursing Home in Queens, New York, where Nelson Tuchman, among his other jobs elsewhere, is assistant administrator. Two of the five, Lydie Paul and Norma Michelle, were currently employed at West Lawrence Care in Rockaway, New York. Local 1115 was currently bargaining representative at both of these facilities and Morris Tuchman, Nelson's brother, is attorney for the two facilities.

For their organizing and related activities performed at Windsor Castle, each of the five named individuals received payments from Local 1115. Moore continued to receive his regular weekly pay as organizer and each of the four others received individual payments of $150 by checks issued on October 13, with Norma Michel having received an additional payment of $375 on October 6.

On their arrival at Windsor Castle, according to employee Connie Tillman, whose testimony in this regard was not contested, none of the five individuals, or any others involved in these interchanges having testified, Moore informed in-service director, Meredith Lima, in charge of orientations, that they were there for orientation. Lima told Moore she knew nothing about it and would have to speak with her supervisor. Although Joan McSherry, director of nursing services testified she learned in the prior week from Fogel that ''some people'' would be coming up from New York on October 2 to fill positions on staff, having talked previously about nurses aides, she failed to inform Lima, McSherry arrived at work at 7:45 that morning. By that time the five[4] individuals had been sitting in the foyer since 7 a.m., and Lima was upset when she approached McSherry about the matter. McSherry apologized to her, told her she hadn't told her that they would be coming and we would orient them.

McSherry testified that she then reviewed the five individuals employment applications, noted their qualifications and experience, and ''presumed'' they were going to be good workers and told Lima we would orient them.

This procedure on hiring nurses, in particular, was somewhat irregular, and conflicted with Windsor Castle's regular practice. Windsor Castle normally advertised for nurses aides already certified. These applicants were not certified in Connecticut, although they were in New York. Furthermore, while there was a certification program at Winthrop, Windsor Castle didn't have one, and it did not normally certify nurses aides. On the spot, Lima, who had never done so before, gave the group of applicants a ''challenge exam'' in order to certify them. No such exam had been given applicants since Nelson Tuchman and others acquired Parkview effective June 1.

In addition to the five individuals who arrived together from New York early on October 2, two others were involved with Lima that day. One, Steve Waller, began work as a nursing aide on October 2, and another, Leon Marte, who began work in housekeeping in the prior pay period, was given in-service training. Thus, when Connie Tillman said she saw seven individuals at 7 a.m. on October 2 waiting at the reception area, the group likely included, in addition to the five from New York, Waller and Marte.

Lima herself was sufficiently confused by the events that morning, as acknowledged by McSherry, that she had Henry St. Paul, Hired on October 2 as an employee for the dietary department, complete forms relating to his hire as an experienced nurses aide.

Inasmuch as Fogel had vouched for these five individuals, McSherry had no compunction about immediately putting them on the payroll after passing their challenge exam, even though she would have normally checked references provided on an application, particularly with out-of-state applicants such as these five.

After witnessing the arrival of the group of individuals early on October 2 Tillman spoke with Charge Nurse Paula Switzer at the nurses' station. The record establishes that charge nurses give CNA's their daily work assignments, issue written warnings and provide evaluations which are effective in determinations extending the 30-day probationary period for CNA's. That evidence establishes the supervisory status under the Act of Charge Nurses. Tillman told Switzer

[2] Although ads ran for 11 days, less than a tenth of the total costs, $84.48 of a total of $1073, were attributable to classified ads for nurses aides.

[3] Although Respondent Windsor Castle's brief describes Suarez as a third party employed by another, and Fogel at first testified that Suarez was both a housekeeper at Windsor Castle and an employee of Health Care Services Group, a national housekeeping company, in its answer Windsor Castle admits Suarez' status as supervisor housekeeping/laundry and its agent, within the meaning of the Act and Fogel later, on the record, admitted that Suarez was a department head of Windsor Castle (Tr. 804).

[4] McSherry said there were four, but of course there were five persons waiting. McSherry may have been confused that four were nurses aides and the fifth, Henry St. Paul was a dietary employee.

what she had seen between the seven individuals and Meredith Lima. Switzer responded that she had heard talk about a Union coming in but she wasn't sure if it was 1115 or 1199. She said that 1115 was a ''management union'' and advised Tillman to keep it quiet.

On their hire, Tillman saw some of the five new employees on the floor that day. Moore, who had been assigned to Laura Bates for his orientation, and one of the three females, assigned to Julia Suggs for orientation, while working on the floor, were talking in favor of 1115, handing out Local 1115 designation cards, and informing employees they were from Long Island and they were there to start a union. Later that day, in a patient's room, Moore told Tillman and Bates that he was from Local 1115, and he was there to organize. Tillman told him she had never heard of 1115 but was familiar with 1119 from a previous job. Moore responded that 1199 couldn't help them, because they were in $40 million worth of debt and they, himself, and the others were there to organize.

Tillman saw the same New York employees continue to engage in the same activities on the following and successive days of that week, basically doing more card circulating and union soliciting than working. Other employees were also recruited to solicit cards. One of the new female employees from New York was assigned to Tillman for training on October 5. According to Tillman, this employee, although apparently certified in New York, did not really know what she was doing when Tillman assigned her to a bed patient for morning care. While assigned to Tillman, this female solicited her to sign an 1115 card, Tillman responding that she couldn't because she was still on her probationary period. Tillman did finally sign a 1115 card later that day.

On the same day, October 5, Tillman observed Sandy Moore making a call at a pay telephone by the breakroom at 11:30 a.m. Tillman was 5 to 10 feet away. She heard Moore say he had a majority of the cards signed and that he did what Tuchman sent him there to do. Moore did not testify and this testimony is credited. Whatever minor errors in dates occurred in Tillman's recital and including an instance of Tillman's memory being refreshed by a perusal of her pretrial affidavit, they were not an indication of any prevarication by Tillman, whose presentation was straight forward and credible. Upon hearing Moore's comments Tillman went to the nurse's station and asked Charge Nurse Switzer who Tuchman was. After explaining that she heard Sandy Moore refer to him by name on the telephone Switzer told her that Tuchman was the owner of the facility, Tillman told Switzer what she heard and Switzer repeated her earlier comments about 1115 being a management union.

Later that day, in a patient's room, with other employees Laura Bates and Julia Suggs present, Tillman asked Moore who was Tuchman. At first Moore said he didn't know. Then after Tillman told him she heard him mention Tuchman's name and say that he did what Tuchman sent him there to do, Moore now said, ''Oh, that's the owner of the facility but I don't know him.'' Moore's comment about his lack of knowledge is not credited.

On the same day, October 5, Switzer, after having been paged to Joan McSherry's office, returned and told Tillman that Joan would like to speak to her because she, Paula, and Tillman, had a good rapport. Tillman went to McSherry's office, and with only those two present, McSherry asked her what was going on. Tillman asked what did she mean, McSherry said, about the Union. Tillman said it seems to me you know what's going on. McSherry then asked what did Tillman hear Sandy Moore say. Tillman told her that she heard Moore mention Tuchman's name and that he said he did what Tuchman sent him there to do. McSherry then asked who was circulating cards and Tillman told her Laura Bates and Julia Suggs. McSherry then said that their conversation wouldn't go any further. Tillman's testimony about this interchange is credited, particular in the absence of any contradiction by McSherry who failed to refer to it during her testimony.

Lamaara Davis learned on the evening of October 4, from a fellow employee, Connie Walker, that the Union had arrived at the New Haven facility. The next morning, October 5, Davis was introduced to Moore in the north wing of the facility. They agreed to meet at 2:30 p.m. before Davis started work on her shift at 3 p.m. They met in the facility parking lot by Moore's car. Moore told her he was from the Union and heard she was trying to get a union. She confirmed this. He told her he wanted to give her some cards. When he showed her the cards Davis told him this is not the union I was talking about; that Union is 1199. Moore said 1199 can't help you because they're in debt for like $40 million. Moore told her ''These are the cards you're supposed to sign. They sent 1115 instead.'' He showed her his 1115 identification badge. Davis agreed to distribute the cards and received 10 or 12 of them and then left.

Davis' confusion about the two Unions, the one, 1199, she had earlier supported by a petition she circulated and the one, 1115, Moore said was now acting in its stead, expressed to supervisor Anna Maxwell, and Maxwell's admonition to be careful, has been earlier described. Nonetheless, Davis circulated the 1115 cards among some fellow employees, most of whom had earlier signed her 1199 petition.

The evening of October 5, a Hispanic employee named Ana Marie, who works in housekeeping, entered the breakroom where Davis and other employees were having lunch. Davis and the others immediately stopped their union-related discussion because of an unwillingness to trust this employee from another department. Ana Marie at first spoke to another employee in Spanish, but then turned to Davis and the others and asked if they had signed union cards yet. The room became quiet. Davis and the others said they had not. Ana Marie opened a briefcase full of 1115 cards and Davis now told Latania Slerge it was okay, she's with the Union and told Ana Marie that she had already gotten cards signed. When Ana Marie asked for them, Davis handed them over. At this point Ana Marie received a page over the loudspeaker that she had a telephone call, and she left. Davis then went into her Supervisor, Anna Maxwell's office. Maxwell told her ''Lamaara, I told you to be careful and I'm going to tell you again, because a phone call came in for Ana Marie from Izzy Fogel. So just please be careful about this union. Don't say anything else.'' At this point, Davis ceased her open union discussions and solicitations.

According to Israel Fogel, an Ana Marie Colias,[5] the same person that Davis identified as involved in soliciting and collecting 1115 cards and the recipient of a telephone call from

[5] Her proper name is Ana Maria Pelaez, since changed to Marta Mead.

Fogel the early evening of Thursday, October 5, at the facility, performs cleaning services personally for Fogel at his house located in New Haven. While Fogel testified that he usually leaves the facility Thursday night to return to his then permanent residence in Pittsburgh, and thus would have occasion to advise Ana Marie when he was leaving so she could arrange to clean it, Fogel studiously avoided asserting any claim that his paging of Ana Marie on the particular occasion referred to by Davis was related in any way to her cleaning duties. I thus conclude that it was not. The only other logical explanation for his interest in Ana Marie at the particular time was in her solicitation activities on behalf of Local 1115 and I do conclude such was the case.

Curiously, Fogel, disclaimed any knowledge of any card solicitation or organizing activity on behalf of 1115 during the first week of October. His earliest claimed knowledge of 1115's interest in Windsor Castle's employees came about on the same afternoon in question, October 5, when Morris Tuchman, the attorney, informed him that someone from 1115 had contacted him, claiming that 1115 represented a majority of Windsor Castle's employees, and had made a demand for recognition. Fogel then went over to Windsor to meet and talk with Nelson Tuchman where, in the course of a 1- or 2-hour meeting, they mutually determined to have Morris Tuchman arrange to have an arbitrator at the facility the following day to do a card count. In this conversation Fogel claimed he related to Nelson his past experiences with 1115 and other unions, the process of arranging a union relationship, and the advantages and disadvantages of voluntary recognition as against demanding an election, all in the context of making a business decision.

Fogel's understanding was that recognition had been demanded in a unit consisting of blue collar workers. Further, although this was a matter of importance to the facility, having major economic consequences, Fogel chose to have the card count and its consequences handled in his absence from the facility. He was leaving for Pittsburgh Thursday evening, October 5, and was not returning until late Sunday or early Monday, October 9. Fogel claimed that he delegated his responsibilities on this matter to an administrator, Linda Urbanski. Before he left for Pittsburgh at 9:30 that night, late in the afternoon, he told Urbanski that there was going to be a card count on the following day, although the time had not yet been set.

On Friday, between noon and 2 p.m. Fogel called Urbanski from Pittsburgh to inform her that an arbitrator, Jay Kramer, was coming down to Windsor Castle late that afternoon to conduct a card count. By this time Fogel had been informed of the time of the card count.

The record is silent as to the nature and timing of the arrangements which were made with Kramer as to the card check. Nathanial Hall testified that it was 1115 Vice President Paul Aldrich, who along with attorney Morris Tuchman, made the arrangement with Kramer. None of the three testified in this proceeding. Kramer is one of the arbitrators named in contracts 1115 has in the hospital and nursing home industry.

Early on the morning of Friday, October 6, by prearrangement Hall met with Moore in a parking lot in Westchester County, New York. Moore had with him in his car at the time, the four other New York individuals, Michelle, Lennon, Paul, and St. Paul. They were on their way to the New Haven facility. Under 1199 counsel's cross-examination, Hall testified he asked Moore how he was doing, and whether he had any more cards. Moore gave him some cards, and Hall now testified that he told Moore he would probably see him later that afternoon. Hall denied that he was then aware of any arrangement for a card check by Kramer. Yet, he knew Moore was going to the New Haven, Connecticut facility and would not be released from work until late in the day and his own area of work was on Long Island. In seeking to extricate himself from this apparent slip, Hall finally lamely explained that his purpose in seeing Moore was personal; Moore owed him some money. I reject this explanation. Hall's discomfort and lack of credibility in his responses when pressed on his inadvertent comment to Moore are apparent on the record. I find instead that at this time the card count had already been arranged and Hall, who later arrived at the facility at 5 p.m., was informing Moore that he would be in New Haven for the count by which time Moore and the four others would have completed their stints as organizers and phantom employees for Windsor Castle.

Tillman testified without contradiction that on Friday, October 6, he was still assigned to training one of the female New York individuals. That morning she was in a patient's room with her trainee, Julia Suggs, Laura Bates, and Sandy Moore. The trainee told Moore that she was ready to go, ''Let's go.'' Moore told her to be cool, that he had to wait until some one whose name Tillman didn't recall (Nathanial Hall?) brought them the other cards. The female trainee pressed Moore that she was ready to go, that they had enough cards. Moore repeated that he had to wait for the other cards, but that once they got them, they were going to leave. Moore explained that he was going to go up to Joan McSherry and start a big argument and he was going to leave.

Later that morning Tillman saw all five of the New York individuals gathered in front of the nurse's station and talking with each other. She saw Moore make a telephone call, and then they all left. The five individuals punched out about 10:45 a.m. and left the parking lot in a small station wagon. After they left, McSherry came to the North Wing nurse's station and asked head nurse Mary Adair what had happened. Adair responded she didn't know, she thought evrything was okay.

After about half an hour to three-quarters of an hour the five individuals returned to the facility. Tillman saw Moore and asked him why he came back. Moore said his supervisor (in Local 1115) told him to come back and finish out the day. McSherry testified that when they returned she signed their cards and had them go back to the floor at 11:30 a.m. She said she did this because these were four people taken away from care, and they could assist at lunch for the patients. This treatment of the five employees who left their work stations and the facility without any excuse whatsoever was extraordinary. Shortly afterward McSherry learned that her nursing supervisor and the employees on the floor were very upset upon learning that Moore had only returned when he was told to do so by the Union. As McSherry put it, ''the aides had told the supervisors [that Moore told them he had called the union and the union told him to come back]. The nurses were all up in arms, and the supervisors came up to me in the hall and said we have a problem, something's wrong, and everybody was all upset.'' Tr. 861.

Under these circumstances, in which I conclude McSherry's hand was forced by events outside her control, McSherry now called Moore to her office. She asked him what was going on, that people were saying that they had called, and he was representing, a union. When Moore replied it was none of her business and became arrogant, McSherry told him to get the other people that came with him and leave. When Moore protested that he was the only one who has a problem, McSherry said you came together, you'll leave together and she called the others up to tell them. During this confrontation Administrator Urbanski was also present. When they arrived McSherry told them she was going to terminate them. According to McSherry, Uvonne Lennon wanted to stay but all were terminated. Curiously, although McSherry terminated them at midday, and they all punched out between 12:53 and 12:58 p.m. she wrote on their timecards they were to be paid a full 8 hours for the day. This decision to pay for a half day not worked as well as for 45 minutes in the morning when the group left the facility without authorization, contrasts sharply with the experience of other employees who were forced to leave early whether for personal reasons, injury, or when terminated.

Moore had achieved his earlier stated objective of fomenting a confrontation that day in which he and the others were fired. McSherry permitted and rewarded conduct by a small group of ostensible employees on their last day which was highly unusual and contrary to employer policy and practice and followed a week during which they acted as paid organizing agents of the Union, Local 1115, performing a minimum of duties as employees under the very nose of the Windsor Castle administration. I conclude that both Fogel and McSherry were disingenuous in denying knowledge of the New York group's conduct prior to Friday, October 6, and in authorizing their employment and retention under circumstances where Windsor Castle was aware that these five individuals upon their arrival at the facility were engaged primarily in organizing activities for the week and, further, that they intended all the while to sever their relationship with Windsor Castle upon achieving their avowed and open organizational goal.

It is also evident, based upon the evidence of Moore's conduct, in particular his telephone calls and statements to employees, that Fogel, who reported directly to Nelson Tuchman, was privy to a Windsor Castle scheme to recruit 1115 organizers as ostensible employees who would solicit designation cards over a short period of time sufficient to warrant an impartial card count leading to an immediate recognition of, and early entry into a collective-bargaining agreement with, Local 1115.

McSherry's confusion concerning her role in terminating the New York individuals only serves to strengthen the finding I have made regarding her implication in the unlawful scheme. At first McSherry testified that on the afternoon of October 6 she spoke with Fogel by telephone about her firing of the New York group. At that time he told her that if they were representing a union and she had terminated them and had them leave the building, she would be liable for unfair labor practices. Fogel then told her to offer them their jobs back. Later, on cross-examination, McSherry now recalled that it was Linda Urbanski who in her presence had telephoned Fogel in Pittsburgh and been instructed by him to offer the group their jobs back. McSherry insisted that no union was mentioned during this interchange and no mention was made during it of the card count scheduled for later in the day, although Urbanski had been so informed in a telephone call from Fogel made between noon and 2 p.m.

McSherry waited until Wednesday, October 11, to send letters to the New York group. This was a day following the leafletting by District 1199. Although McSherry admitted there was no real likelihood they would return to work on Monday after the confrontation and discharges on the prior Friday, incredibly she nonetheless waited because there was ''a possibility, he was so arrogant, he may have come back.'' Tr. 922. When, of course, Moore and the others did not return, McSherry sent a certified letter to each of the four nursing aides, excluding Henry St. Paul, the dietary employee not under her supervision. She did not follow Fogel's instructions as she described them. Her letter did not offer reinstatement, as directed, but rather treated the four as continued employees who were expected to return to their work schedule on Monday, but since they did not appear, were being given another change to return. A web of lies was being woven to create the impression that the four continued to retain their status as employees through the late afternoon card count on October 6. The letter read:

> You were scheduled to be at work on Monday, October 9, 1989. We are interested in your continued employment. If I do not receive a response from you by Friday, October 13, 1989, I will conclude you have abandoned your position at Parkview Nursing Home, Inc.

McSherry insisted the four to whom she wrote were on the work schedule for Monday, even though she had fired them. She also admitted she was not interested in having them return. She further claimed that she was afraid of being held liable for unfair labor practices even though she had fired Moore and his associates after they walked out of the facility without notice for an hour and after coming back had acted in a very arrogant manner.

None of the fired group ever returned to the facility to work in response to the letter and none filed an unfair labor practice charge. In my judgment, the asserted fear which impelled Fogel to insist on a letter offering the New York contingent an opportunity to retain their jobs shielded the true motive which was an attempt to establish that the cards signed by at least four of the five to be submitted on the upcoming card check later in the day, would be validly included in the count. Apart from their status as employees at all, a serious issue on which I conclude, infra, that the five New York individuals were not bona fide employees whose cards could be counted in determining Local 1115's majority status at the time Windsor Castle granted it recognition, Respondents argue that on the day on which 1115's majority status was determined, the five had an expectancy of continued employment by virtue of Windsor Castle's later written invitation to them to continue their employment. As I have concluded, that invitation was not made in good faith. Respondents make a final argument that inasmuch as the five were employed on the day of the card check Board precedent supports their inclusion in the unit for purposes of union recognition. Unfortunately, all of the five were terminated hours before the card count was held and it would be a perversion

of the principle upon which Respondents rely to permit recognition to be supported by designations cards signed by persons, who, at the time of the count, were no longer employees.

On Friday afternoon, Local 1115 Business Representative Pat Berry and Nat Hall, picked up Arbitrator Jay Kramer on Long Island and brought him to Windsor Castle to perform the card check. Hall's trip to New Haven was consistent with his early morning promise made to Moore. They arrived at about 5 p.m. In spite of his earlier discharge, Moore was still at the facility, and presented additional cards to Hall on his way in to the count. Linda Urbanski represented Windsor Castle at the card count. She supplied business records and W-4 forms for signature comparison. Berry and Hall attended for Local 1115 as did dischargee Norma Michael. Sandy Moore was ''in and out'' during the card check.

Although both Respondents rely heavily on the card count and arbitrator Kramer's award and order, see infra, as establishing beyond peradventure Local 1115's majority status among certain of Windsor Castle's hourly employees, neither Respondent was able to present any oral or documentary evidence to establish what Arbitrator Kramer reviewed in determining the composition or scope of the bargaining unit in which he conducted the count, or which designation cards were presented to Kramer to establish 1115's majority showing. The only witness offered by Respondents who was present at the count, Nat Hall, did not describe with any detail or precision any of the material reviewed by Kramer, other than the use of either a W-4 or some other type of payroll record for comparison of signatures on the designation cards. Fogel, not present at the count, when questioned about the matter could not identify what information Kramer was given to establish the unit or the majority showing. The Respondents asserted that the cards utilized in the count were not segregated and could not possibly be identified by the time of trial. Linda Urbanski, Windsor Castle's representative at the count, was not called as a witness, and while she apparently left Windsor Castle's employ a year prior to the instant trial, after being asked to resign, no effort had been made to contact her or subpoena her to appear as a witness. Fogel testified that there was bad blood between the two when Urbanski left, but he also admitted that locating her whereabouts was not a problem, and that she may have provided truthful testimony about the events at the card count. Under these circumstances I am constrained to infer had Urbanski been called to testify as a witness by Windsor Castle her testimony would not have been favorable to its defense that its voluntary grant of recognition and later execution of a contract with 1115 were based on a valid majority showing among unit employees.

While it cannot be established definitively, it is highly likely that the cards of the five New York contingent were submitted to Kramer, who, in his award and order identified one of them, Norma Michael, as being present as an observer for 1115. As earlier noted, Linda Urbanski did not testify and there is no evidence that she informed Kramer that they had been terminated earlier in the day, although, she had been present when McSherry took that action.

In his award and order he dated and acknowledged on October 10, Kramer described the appropriate unit as consisting of blue collar workers only, including nurses aides, orderlies, dietary aides, housekeeping/laundry aides, maintenance aides, and security. Later on the same day he issued a correction, expunging the classification of security from the unit.

Kramer determined that of 102 eligibles in the unit, 53 by valid signatures had designated and selected Local 1113 as their collective-bargaining representative. On the basis of that result and his certification that 1115 was the exclusive representative for the employees in the described unit, Windsor Castle immediately granted Local 1115 voluntary recognition in that unit.

On the same day, October 10, that Kramer issued his award and certification, representatives of District 1199 appeared outside the New Haven facility to leaflet and talk to employees. Lamarra Davies testified without rebuttal that after seeing the 1199 representatives outside and upon entering the facility that day a little after 3 p.m., she saw her nurse, Alice Garliglio come running in, stop Joan McSherry and tell her ''the union is out there, they're out there, they're all over the place.'' When McSherry asked Garliglio who they were, and Garliglio replied ''the people from 1199, they're all out there,'' McSherry now responded, ''well, don't worry about it. You know, it's taken care of. Don't worry about it'' and then walked into her office. (Tr. 251.)

Shortly after the card count steps were undertaken between Windsor Castle and Local 1115 to quickly negotiate and execute a collective-bargaining agreement. Fogel returned to the facility from Pittsburgh on Tuesday, October 10. By Wednesday, October 11, he and Attorney Morris Tuchman had held several conversations and had exchanged faxes containing items to be included in a contract, including starting rates, increases, sick days, holidays, dates, and related matters. It appears that Fogel was supplying Morris Tuchman with responses to some of the demands being made by Local 1115. A meeting was then arranged by Tuchman to have Fogel meet with David Aldrich and Nat Hall at the Norwalk Holiday Inn on Thursday, October 12, to conclude a memorandum of agreement.

During this period of time, according to Hall, he had no contact at all with the Windsor Castle unit employees, and there is no evidence that anyone else from 1115 did so. It was Hall's position that there was no need to call a meeting of employees to introduce their new representatives and seek to ascertain their desires on the upcoming negotiations, because ''that is not always done'' and because he had received information from Pat Berry and Sandy Moore that they had consulted ''a number of employees'' with respect to union demands.

According to Fogel, although Morris Tuchman and 1115 officials were negotiating a contract over the telephone and by fax before the October 12 meeting, there were still some issues to be resolved at the meeting. Fogel recalled that he and Aldrich and Hall worked out a final starting pay rate, final increases, bonuses based on hours worked and discussed but did not conclude the matter of health insurance. However, on reviewing the memorandum Fogel agreed that insurance coverage was resolved, with the agreement providing that the current health insurance plan would be continued with certain modifications and at no cost to the employee.

Fogel arrived about 1:30 p.m. and the meeting continued to 4 p.m., with the participants sitting in the lobby. Fogel recited that several drafts were reviewed during that time. Fogel was in touch directly with Morris Tuchman through Windsor Castle, and changes to an initial draft apparently

brought to the meeting were faxed from Tuchman's office, first to Windsor Castle, and then by an employee messenger to the parties in Norwalk, and later, Winthrop, and delivered by a courier from there. The bulk of the changes were agreed to in the first 20 minutes of the meeting, and the last fax represented a clean copy with perhaps several additional changes and in a form which the parties could sign. Before signing the memorandum, the fax data was removed from the top of the pages, and the pages were xeroxed. The final version, indeed, none of them, contains a recognition clause, recognition having been granted orally on October 10, but the unit is described as a service and maintenance unit, and it was agreed, inter alia, that the language, not economics, of the agreement shall be as that found in the Bristol Manor Nursing Home agreement except the probationary period shall be 90 days.

The record contains three versions of the memorandum; one, an apparent final form containing the handwritten date of October 12 and the signatures of Hall and Fogel; with the other two containing a few handwritten question marks and minor handwritten revisions, neither of which latter drafts bear date or signatures. A review of the documents shows that few revisions of substance were made to the initial draft, contrary to Fogel's assertions.

Fogel defended the arrangement to meet in a Norwalk Motel, 35 to 40 miles from New Haven and the Windsor Castle facility and direct access to communicating, duplicating and transmitting equipment, and counsel, on the ground that it was equidistant between the parties, and further, defended the timing and circumstances of a meeting, at which few, if any, items of substance had not already been worked out, and at which elaborate arrangements had to be made to produce a final document, on the further ground that he wanted to have a final thing to sign, and the earlier draft was too messy to do that. Left unstated at the time, but clearly acknowledged under further questioning, was the fact that Fogel was aware that by October 12, District 1199 had appeared in front of the facility and was distributing literature and talking to employees. Thus, speed in executing a memorandum and final agreement was clearly a matter of some urgency to all concerned.

Following 1199's appearance outside the facility on October 10, Lamarra Davis, who was given a 5-day[6] suspension by Windsor Castle on October 14, meet with District 1199 Organizer John Neale immediately afterward. She told him about her prior attempt to gain support for 1199, her rebuff in that attempt by Sandy Moore and her signing of a card for 1115 because she thought that was the only union there. She agreed to obtain designation cards for 1199 and in a week's period signed up about 30 employees.

When Davis informed supervisor Anne Maxwell of her suspension, Maxwell confirmed her earlier advise to be careful. Nonetheless, Davis began her open solicitations for 1199 the following day, as did Connie Tillman and other employees given cards by Neale. Admitted shift supervisor, Lee Barsczewski,[7] also warned Tillman to be careful.

Then, on October 16, Supervisor Maxwell informed Davis she had been terminated by McSherry for showing ''favoritism'' to Davis, and because Maxwell had not informed McSherry what she knew about Davis' Union activities. The apparent favoritism had been Maxwell's refusal to discipline Davis on October 12 for an incident involving a patient for which she was suspended 2 days later by McSherry and on the basis of which action the allegation was included in the complaint which was settled at trial.

On the same day, October 16, Fogel again met with Aldrich and Hall to sign a full collective-bargaining agreement, changes were made, proof read and initialed and the agreement was signed by Aldrich and Fogel. The bargaining unit is described as ''all employees, excluding licensed practical nurses, registered nurses, office and clerical employees, supervisors, watchmen and guards.'' The agreement also contained a union shop provision and required the Employer to discharge any employee not complying with the provision.[8]

On the following day, October 17, District 1199 filed a representation petition in Case 34–RC–922.[9]

Although a sign had been posted by the timeclock on October 12, announcing a meeting by 1115 with employees to be held the following Wednesday, October 18, the meeting was rescheduled when Pat Berry and Nat Hall showed up in the afternoon and informed employees that they had been held up in Hartford and were meeting McSherry that day. When asked about the contract, they told employees everything was squared away, it had been faxed to Fogel, but they didn't have a copy with them.

Subsequently, on or around October 24, at a 2-hour meeting held with employees, Hall and Berry handed out highlight sheets and explained the benefits negotiated in the contract.

A set of minutes show that at an emergency meeting called among department heads on October 26, Fogel presented the topic of the collective-bargaining agreement made on October 12 to represent Blue Collar employees. He reviewed the litigation between the two unions which had engendered controversy. He referred to a ''Closed Shop'' (provision) which he defined as requiring ''newly hired employ-

[6] This action was one of the complaint allegations settled at trial and severed from the instant proceeding.

[7] The name is misspelled Baisczewski in the complaint.

[8] The provision is hardly an example of good draftsmanship. Perhaps the proofreading left something to be desired or was it undue haste in the execution? This is what the parties executed: ''the Employer shall promptly upon hiring new employees notify them of the existence of the Union to the Employer than an employee has not complied with the Union shop requirements, the Employer shall forthwith discharge said employee and forthwith advise the Union thereof in writing.''

[9] The Regional Director's Decision and Direction of Election, dated December 21, 1989, rejecting the contention of the Employer and Intervenor 1115 that their contract should serve as a bar to the petition because to do so where it was executed while organizational efforts were underway by two competing unions would serve to undermine the principle of the freedom of employee choice, was remanded to the Regional Director in a Decision on Review issued by the Board on May 25, 1990, in which the Board rejected the Regional Director's application of recognition bar doctrine to the facts presented, found that the hearing officer had erred in failing to admit the October 12 memorandum into evidence as a claimed contract, and directed further proceedings consistent with its decision, including a determination of the applicability of the contract bar doctrine to either the collective-bargaining agreement or the October 12 memorandum. The election was held on January 8, 1990, but the ballots were immediately impounded pending the Board review. To date, and pending the resolution of the instant proceeding, no further action has been taken by the Regional Director on the petition.

ees to join the union within three (3) months of employment, or termination may result.'' The attendees were informed that the obligation of newly hired employees to the Union would be incorporated into orientation procedures, and that union cards may also be issued during such time.

There is unrebutted testimony that Fogel added to or departed from the minutes to discuss retroactive raises as well as noting that the owner's brother was an attorney who dealt with labor unions.

A hearing on the petition in 34–RC–922 was held on November 3. Lamarra Davis was subpoened to testify. After receiving it, she gave it to Fogel in the hallway in front of McSherry's office. She told Fogel she wouldn't be able to come into work that day because she had to testify at a hearing. Fogel called McSherry over, and asked Davis ''Is all this really necessary?'' When Davis replied she believed it was, Fogel told her ''You know, this can cause a lot of trouble, a lot of problems.'' Davis said she didn't believe so. Fogel persisted, asking Davis, ''Well, why are you doing it?'' David replied, ''For liberty and justice for all.'' McSherry then told her she would not get paid for it and Davis said it didn't matter. They said ''fine, ok'' and Davis left. Davis is credited on this interchange.

Marianne Hally, director of social services, was subpoened by District 1199 Attorney Jamie Mills on November 10 to appear at the November 13 hearing in the representation proceeding. Hally told Mills she was not in any union. Hally was also asked and told Mills about her job duties. After this conversation Hally called Urbanski to her office, handed her the subpoena and asked if she, Urbanski, knew anything about it. Urbanski said she would have to contact Fogel to find out what to do. Hally asked if this had anything to do with Urbanski wanting her to take Friday off. (Urbanski had previously pressed Hally to take Friday, November 10, off, purportedly to reward her good work and to relieve pressure and stress). In Hally's presence, Urbanski proceeded to call Fogel, left a message for him, and then got a Tuchman. While on the phone she asked Hally who subpoened her and what she looked like. Hally then handed Urbanski a check signed by Jamie Mills. Urbanski said she would be in touch with Morris Tuchman and then get back to her. She then told Hally she did not have to show up at court and honor the subpoena. Hally said she would have to speak with her brother who was an attorney. She asked Urbanski if she had been subpoened, and Urbanski replied that she had, but she didn't have to appear, that ''Mr. Tuchman'' would represent her. She also stated that Nelson Tuchman[10] was trying to stay away from the facilities since the people who subpoened Hally were trying to subpoena him.

About an hour later Hally was paged to Urbanski's office. Urbanski was on the phone. She handed it to Hally. Fogel was at the other end. Fogel asked her if she knew what any of this was about. Hally said no. He asked her if she remembered the department head meeting on October 26. She said yes. He wanted her to relate what she recalled from that meeting. Hally said she recalled collective-bargaining and closed shop. He wanted to know what those meant. She told him the only one she knew was closed shop. She told him what it meant. He then asked who had subpoened her and what was said. She then related the conversation with Jamie Mills. Fogel then told her to tell the truth, not to be nervous, and Morris Tuchman would meet with her on Monday before the hearing. As Hally left the office Urbanski gave her her beeper number and her home phone number and said to call over the weekend if she had any problems or questions.

On Sunday, Hally called Urbanski to say she had spoken to an attorney friend who told her she needed to honor the subpoena. Urbanski said that wasn't true, that she needed to come to work and not to go to the National Labor Relations Board on Monday. Hally said okay, and hung up.

On Monday morning, Hally called in for Urbanski. As Urbanski was on another line, Hally left a message saying that she would miss work because she was honoring the subpoena. Hally testified at the hearing. On the following day she was paged to Fogel's office. When she arrived Urbanski was also there. Fogel told her he had heard she testified yesterday and according to the transcript there seems to be some ''confusion''; he just wanted to ''clarify a few things.'' Tr. 173. He proceeded to ask her some questions about who reported to who such as did the nurses aides report to Linda Urbanski. She said no. He started to read some of the testimony from the transcript. He handed her a job description, and said he thought she needed a better understanding of her job and duties. He also gave her a copy of minutes from the October 26 department head meeting,[11] which had an attendance form attached. He told her it was best for her to review these and become familiar with them. Hally responded that this was a form of harassment and retaliation, and then left.

The day after this meeting, Theresa Pepe, director of recreation, told Hally that Linda Urbanski was angry that she had appeared at the hearing and wanted to fire her for insubordination. After the hearing the relationship between Hally and Urbanski deteriorated. Urbanski avoided Hally in the Hallways. Urbanski would not acknowledge Hally's greetings and appeared very angry and hostile towards her. Sometime later, when Hally was being evaluated she asked Urbanski why she was angry with her. Urbanski said she was angry because Hally had appeared in court and that Tuchman did not expect her to show and it caused a great inconvenience for the nursing home. Hally's 8(a)(3) and (4) allegations were settled during trial. While Respondent failed to take a position during trial whether Hally was a statutory supervisor or managerial employee, in its brief at page 24 Windsor Castle asserts that Hally was managerial. Its belated position is rejected and this issue will be discussed, infra.

Sometime in November Lamarra Davis and Julia Suggs accompanied maintenance employee Bruce Bains to Urbanski's office because Bains had said he and an Angela Cooper had not received their 50-cent increase due on completion of their probationary period. When Davis asked Urbanski about this, Urbanski said he didn't get the raise because they were getting a 30-cent-per-hour raise from the Union. Davis responded that the Union's raise had nothing to do with it because the employer had told them about the raise when they were hired. Urbanski now replied, ''Well, that's what happens when you have unions. You know you

[10] The incorrect designation of Nelson as ''Milton'' at Tr. 168, l. 20 is hereby corrected.

[11] This version differs from the one she was originally given in that it omits any reference to litigation between the Unions and includes a reference to the October 16 collective-bargaining agreement, absent from the first.

can't get the 50 cents because you'll receive 30 cents from the union.'' Davis said that has nothing to do with it, and Urbanski repeated that's what happens when you get unions.

Davis filed a charge in the time period when she was testifying at the representation hearing. A few days later she told Urbanski that there had been a mixup and she had not intended to file the charge specifically against Urbanski, but rather was filing against Joan McSherry. When Urbanski asked why she had been named, Davis said my problem is with McSherry because ever since the conflict between 1115 and 1199 somebody's constantly on my back and it's been McSherry. She kept getting writeups every day. Davis noted that her support for 1199, trying to get it in here was no secret. Urbanski acknowledged Davis' union support, but denied knowledge that she was being harassed about it, and agreed to have a talk with McSherry about it.

As earlier noted, the representation election was conducted on January 18, 1990. Prior to it, Connie Tillman circulated a petition signed by over 20 employees expressing support for the Labor Board's decision not to recognize the ''phony contract'' negotiated by 1115, and for 1199, and threatening a strike if Windsor Castle interfered with the election. A strike vote was held among 1199 employee supporters on or about January 8, 1990. After the election, on January 31, 1990, District 1199 sent a strike notice to Windsor Castle and the Federal Mediation and Conciliation Service and threatened to strike on February 12, 1990.

On February 7, 1990, Nelson Tuchman called a meeting of all staff of the facility. According to Connie Tillman, and not contradicted by any of the Respondent's witnesses, she had not attended any such meeting before or since this date. Tuchman who spoke to the assembled group, also prepared and distributed to the employees, along with their paychecks, on February 8, a two-page letter presenting Windsor Castle's reactions to the strike notice. At the meeting, Tuchman told the employees that if they went out on strike they would be fired, and that strike was illegal because 1115 is the recognized representative and 1199 cannot, therefore, legally strike or issue a strike notice. Tuchman also claimed that the National Labor Relations Board said 1199's 10-day strike notice was illegal, and they had to send a 30-day notice. He compared the two unions to Coke and Pepsi, and disparaged both as fighting for the employees' dues. However, Tuchman then went on to highlight the benefits provided under the 1115 contract and described them as being far superior to increases in a 3-year contract recently negotiated by 1199.

In the letter, after reciting the matters he presented orally on February 7, Tuchman made pointed reference to the fact that facilities that signed with 1199 were laying off employees left and right.

During the course of the meeting, Tillman challenged Tuchman about employees not receiving their raises on completion of their probationary period. Tuchman said he wasn't aware of their raises being taken away. Tillman responded,''You're the owner of this facility, and you don't know what's going on here.'' She added she knew exactly what was going on, and if she had known he was going to call a meeting, she would have brought the contract she had from the prior hearing. Tuchman asked Fogel who she was and took Fogel into the hallway for a brief discussion. When they returned, Tillman was now ignored on every question she put to Tuchman. But Tuchman did ask Tillman if she was prepared to be sued, and all the other employees, if they followed her out on strike. Tillman responded that he couldn't get blood from a turnip.

Also on February 8, Union Representative Steve Maritas accompanied by a group of ''tall, big, husky men'' arrived at the New Haven facility. Tillman saw them walking all around the building. Tillman also saw Fogel up in the front as she was coming down the hall, and he pointed to her, and the men followed her into a patient's room. As they entered they ran into Laura Bates, another unit employee. One stood in front of Bates, and one behind her, and they advised Bates and Tillman to call off the strike or else there would be repercussions.

As the men were standing by the nurses station, Shift Supervisor Mary Adair tried to get them to calm down, because they were upsetting the patients, and asked them to leave the floor. They told her that they had a right to be there, and that if the employees didn't call off this strike, what they were going to do to them. One of the men said they take on bimbos like us all the time. Mary Adair called Joan McSherry to come to the floor. Adair told McSherry that the men did not have a right to come on the floor to upset the girls and the patients and that they also had pointed in her face. McSherry replied that they had a right to be there, and there was nothing that she could do about it. When Adair then asked, what about patient's rights, McSherry did not respond and left.

The only witness called by either Respondent to rebut Tillman's account of the foregoing events of February 8 was Maritas who denied calling any employees bimbos or telling any of them that he knew how to take care of people like them (who refused to call off the threatened strike) or even being at the facility at any time before May 1990. Maritas contradicted this latter testimony when he admitted, under cross-examination, that he had been at the facility sometime in March, prior to being assigned as 1115 representative to the facility in May, in relief of Pat Berry. Based on Maritas' casual and frivolous manner on the witness stand, the serious contradiction regarding his first visit to the facility, and the overall unpersuasive nature of his testimony and inability to recall facts regarding his first assignment to the facility, I discredit his denials, and credit Tillman's account of the events of February 8, 1990. I also do not credit Maritas whenever either Tillman or Harriet Banks have attributed statements to him on later occasions in the spring of 1990 at the facility.

In the spring of 1990, Maritas was at the facility on a regular basis seeking employee executions of dues-checkoff authorizations for 1115. In either March or early May, depending on which recollection between employees Harriet Banks or Connie Tillman is more accurate, but whose testimony otherwise is corroborative of each other, Maritas approached nurses aides Banks and Tillman on the floor. The employees were together, having come out of a patient's room. Maritas asked Banks if she was in the Union, and she told him no, she wasn't and didn't want to be. She also told him her 90 days weren't up anyway. Maritas, nonetheless, asked her to sign a checkoff card which may also have contained an application for membership. When Tillman asked why he was asking Banks to sign if her probationary period wasn't up yet, Maritas responded that he wasn't coming back. When Tillman asked how he was going to represent them, Maritas

said that certain employees would be union delegates. Maritas also offered to waive Banks' initiation fee if she signed, but Banks declined.

The three continued to argue back and forth, with Maritas exclaiming at one point, that it was clear who Tillman was supporting. Tillman was wearing a 1199 button. Tillman pressed Maritas about terms of the contract that he had and Maritas told her that it was a closed shop and they would be fired if they didn't sign. When Tillman raised another question pertaining to the contract, Maritas said he wasn't going to stand there and let Tillman intimidate him anymore. He put the cards and paraphernalia back in his briefcase and walked away from them.

Maritas continued to approach Banks after this first encounter. The following week Maritas spoke with her on the floor while she was with a patient. He asked if she was ready to join the union yet. Banks again declined and again informed him her 90 days was not up. At the end of that month of May, according to Banks, Maritas now told her on the floor that he had a contract with the facility, and that everyone had to join by a certain time and basically she had to join. At this time Banks was again engaged in patient care.

On May 24, 1990, Windsor Castle posted and distributed to employees with their paychecks a memorandum signed by new administrator, Margaret Bucknall, informing them that ''the contract requires that all eligible employees sign checkoff authorization cards and become members in good standing as of June 1, 1990. If eligible employees do not comply with this union request, the facility will be obligated, by contract, to discharge such employee(s). You must obtain these checkoff authorization cards from Carol Walker in Personnel.'' The following day, another memorandum was posted at the timeclock which stated ''Please disregard the recent memo concerning checkoff authorization. The memo was erroneous and all union business will be handled by representatives of 1115.''

A letter followed in June 1990, from Local 1115, signed by Aldrich, which informed employees that the ''Union has a Union Shop Agreement with your Employer. The Union Shop Clause requires you as a condition of employment to become and remain a member of our Union in good standing.'' It then informed employees that they were obligated to pay $15.00 per month for union dues. It stated that employees could sign a checkoff authorization or make payments directly themselves. It then stated that if ''you do not meet your obligation, in accordance with the Union security provision of the Union agreement, our Union will have no alternative but to request your Employer to discharge you.''

Maritas continued to go after employees to sign union cards at the facility. Sometime in September he again approached Tillman and Banks. Tillman told Banks that she didn't have to speak with Maritas, Banks told Maritas she would not talk while she was doing patient care, and they both left. Shortly afterward both employees were told to go to McSherry's office. As Banks was treating a patient in a whirlpool bath, her charge nurse and immediate supervisor, Rose Stockman, relieved her of immediately responding to McSherry's order. A half-hour later Banks and Tillman were emptying linen near McSherry's office when they saw Maritas in the hallway and McSherry come out of her office. McSherry told them that Maritas wanted to speak to them and they should hear what he has to say. Nurse's aide Rochelle Ramsey was also nearby. When Tillman and Maritas started arguing McSherry asked them to move into the staff dining room. Maritas got the 1115 shop steward, Michael Williams, to come to the room over Tillman's protest that she didn't want 1115 representation because she was not a member.

Banks recalled Maritas now told them, ''I'm tired of fool games. I'm tired of playing games. Here's the contract. If you don't sign this . . . [he had a form authorizing union dues to be taken out of salary] I'm going to ask the employer to terminate you.'' Tillman recalled Maritas referring to the card as ''a union card.'' The card was either a dual-purpose application for membership and dues-checkoff card or it only contained a dues-checkoff authorization form. In either case, Maritas' conduct in threatening their discharge for failing to execute the card went well beyond the legal requirement under a valid union shop clause that employees tender the dues uniformly required as a condition of acquiring membership in 1115 in order to avoid the adverse consequences of union enforcement of this clause. Maritas also referred to the contract, which he produced from his briefcase, as containing a closed shop. Tillman told him do what you have to do, and Maritas said he would submit their names to Administrator Margaret Bucknall, to have them fired.

After the meeting, Banks asked McSherry if she would be fired if she didn't sign. In a reply not contradicted by McSherry, the nursing director told Banks, ''I don't know what's going on. You have to do what they say. He is the boss. He's handling things. You listen to what these people are telling you.'' Banks then left.

In September 1990 Local 1115 distributed another letter to employees identical to the one it had distributed earlier in June, referring to employee obligation to comply with the union shop clause at the risk of loss of their jobs.

On October 28, 1990, Local 1115 posted several documents on the union bulletin board, including three letters addressed to Bucknall demanding that Banks, Ramsey, and Tillman be discharged for not being ''a member in good standing in the union as a result of his/her failure to pay dues.'' Local 1115 also posted a notice stating that ''This is a Union Shop. As of November 1, anyone not signed with the Union will pay $125.00 initiation fee.''

After seeing the notices, Banks, Tillman and Ramsey all demanded of Bucknall that she remove them because they were an invasion of privacy. Tillman asked to speak to Tuchman but he was unavailable. When she asked Bucknall if she was going to be terminated, because she wanted to know what to do, and where to file charges, Bucknall could only reply she was not terminating anyone, and she needed to contact their attorney.

When Banks and Tillman asked Maritas why he had put their names in a display case like he had, he responded, ''To show your co-workers what kind of people you are.''

By letter dated January 24, 1991, Aldrich, on behalf of Local 1115 made another written demand for the discharge of Ramsey and Banks because they are not ''members in good standing.'' On January 28, 1991, Bucknall asked Banks to come to her office. Supervisor Lee Barsczewski and Union Shop Steward Michael Williams were brought in. Fogel was present. Banks objected to Williams' presence as she was not in the Union. Fogel replied, ''That's the prob-

lem, you're not in the Union.'' He went on to inform her he had a contract with Local 1115 and he had a certified letter saying he had to terminate her if she did not sign this paper. Fogel held the paper in one hand and an ink pen in the other. Fogel described the paper as authorizing dues and something else (initiation fee?) taken out [of her salary]. Banks asked if she could have time to think about representation because she didn't have anybody there with her. Fogel denied her request, saying she had been there long enough to know what was going on. He asked if she was going to sign it, and she said no. He said, ''Okay, punch your card.'' She then left. Fogel also gave her a copy of the Union's January 24 letter.

The following day, Banks called in to explain she was so upset she had failed to punch out but was informed she had been signed out. Banks came in to pick up her last check, and was given a pink slip giving ''willful misconduct'' as the reason for her firing.

Discussion and Analysis

In determining whether Windsor Castle provided aid and assistance to Local 1115, thereby tainting whatever card showing that Union made as a predicate to both Arbitrator Kramer's card check and Windsor Castle's recognition of, and immediate entry into a bargaining contract and relationship with, 1115, one must examine the totality of the circumstances occurring at and in close proximity to the time of recognition. *Siro Security Services*, 247 NLRB 1266, 1271–1272 (1980); *Rainey Security Agency*, 274 NLRB 269, 279–280 (1985). If such an analysis shows that the employer's support for the union exceeds the bounds of ministerial cooperation and evinces, rather, a pattern of assistance, or conduct of such a nature as leads employees to reasonably conclude that the employer favors their selection of the union, than any subsequent recognition is tainted and may not be supported by claimed majority support garnered as the fruit of such unlawful activity. See *Famous Casting Corp*., 301 NLRB 404 (1991); *D & D Development Co.*, 282 NLRB 224, 228–229 (1986); *Longchamps, Inc*., 205 NLRB 1025, 1031 (1973).

Such a pattern of conduct may take many forms. The facts in the instant record illustrate some of them, the totality of which lead me to conclude that 1115 was unlawfully assisted by Windsor Castle from the outset, weeks prior to the card check, and continued unabated through the time period covered by the record.

A number of different supervisors admonished employees to be careful when disclosing their interest in supporting 1199, and, in particular, identified 1115 as either the ''Company'' or ''Management'' Union.

Windsor Castle failed to show a special need to hire the five individuals at the beginning of October. Among other things the newspaper ads placed were not primarily for CNA's and the pool arrangement in which Windsor Castle participated in utilizing them was not uncommon in the industry.

As to the manner of their hire, the facts show that an employer supervisor and agent, Suarez, initiated contact with 1115 with management's knowledge and approval to obtain these additional staff. Most telling, no one representing the employer with knowledge of the full facts came forward to describe the details and circumstances of the union contact. The absence of such information is important in weighing the legality of its conduct. *Siro Security Services*, supra at 1272.

Clearly, 1115 saw this contact as an opportunity to organize and it acted accordingly. It dispatched a paid organizer and four others whose identity would have been known to Windsor Castle's owner and probably its attorney. It paid the staff organizer, Moore, his salary and the four others moneys for their services to be performed at the New Haven facility. Those services were predominantly organizing services.

The staff to receive and process the new arrivals' applications and hire were kept in the dark, and, ultimately, special arrangements had to be made for their employment, with final approval given by the Nursing Director McSherry after she had been informed by Executive Director Fogel that ''some people'' would be reporting for staff positions on that Monday and who had, in effect, approved their hire in advance. The hiring process was also so rushed that the normal process of checking references was completely omitted.

There is certain evidence, some already noted, that supervisory personnel were aware that 1115, in contrast to 1199, was a ''management union,'' i.e., preferred by management, the installation of which as bargaining agent would be eased, and, further, that it would be risky, even dangerous, for employees to make known their opposition to its approval by talking openly against it.

In addition to evidence of direct employer solicitation of 1115 organizers there is strong evidence that either Windsor Castle authorized the hire of the five individuals to organize employees over a short period of time, or that it became aware early in the week of their employ that they were spending a good portion of their worktime and that of other employees in soliciting for 1115 and did nothing to terminate such conduct. *Monfort of Colorado*, 256 NLRB 612, 613 (1981).

I subscribe to the former interpretation, based primarily on the credited testimony of Tillman who overheard Moore refer by telephone to having completed what owner Tuchman sent him New Haven to do, namely, obtain a majority of employee signatures on 1115 designation cards. Such testimony speaks directly to Windsor Castle's participation in a scheme to defraud employees of their rights. It is a significant admission not only against 1115 but against Windsor Castle that it conspired with 1115 to deprive employees of their right of free choice and sought to impose the Respondent Union upon them under the guise of an ostensibly arm's-length procedure of a third party card check.

Tillman's overhearing of Moore's conversation led directly to McSherry's unlawful interrogation of her about her knowledge of Moore's and other employees' union activities.

Fogel's participation in the fraudulent scheme is highlighted by his paging of employee Ana Marie to his office immediately after she displayed a brief case full of 1115 cards and solicited cards collected by employees Davis and Slerge. Fogel's leaving town at this most crucial time and absenting himself from participation in the card check and recognition exercise can be explained most cogently as based upon an understanding of the parties that the organizers had done their work well and no problem remained to achieving the objective they both sought, i.e., entry of a bargaining relationship to be imposed upon the Windsor Castle employees.

What has been said previously about the lack of testimony about the initial employer-union contact, is equally applicable to the absence of any information forthcoming from either participant about the details and circumstances of the card check. It is evident that union officials were aware early in the morning that a card count was planned for later in the day, and that the services of the five organizers would no longer be required at the facility. The manner in which the five first quit the facility, the commotion and disruption they caused among employees and in-patient services then and when they soon returned to be reinstated without incident contrary employer practice and policy, and finally manufactured an episode to procure their early termination with full pay for the day, among other special benefits, see *Prestige Bedding Co*., 211 NLRB 690, 691 (1974), only serves to buttress and enhance the conclusions I have previously reached regarding the sham nature of the organizers' employment, the Employer's knowledge of same, and its acquiescence in the union agents' conduct, all in aiding and abetting the Union in achieving its tainted status as exclusive bargaining agent.

The facts and circumstances surrounding the Employer's offer of return to employment of the five, in particular, manifests a belated and unsuccessful effort to retain the employee status for purposes of the card count of five card signers whom both parties knew had hours previously been fired and who failed to disclose to arbitrator Kramer their current status.[12] In failing to disclose such information, indeed, permitting the participation at the count of two of them, Michel and Moore, the parties are at least guilty of misleading Kramer and permitting him to conclude his function without being in possession of crucial facts which might have, and probably would have, led him to conclude that a majority of signers among employees were not submitted to him for his count. Of course, this factual failure to disclose was the least of what the parties withheld from Kramer, as I have recounted above.

A final failure to produce facts by Respondent, which is crucial to their claim of an uncoerced majority showing, concerns the documents, records, and cards relied on by Kramer in endorsing 1115's majority showing. As I previously noted, the record is lacking as to the precise cards and list of employees which were submitted to Kramer for his inspection. Both Respondents' apparent efforts to hide behind Kramer's award is unavailing, even if no conspiracy or aid and assistance has been proven, since the award itself is inconclusive if the alleged majority showing is based on the inclusion of the cards of nonemployees or either includes or excludes employees improperly in determining the scope or composition of the unit. While General Counsel clearly has the burden of establishing the unlawful recognition of a minority union, see *Ladies Garment Workers ILGWU*, 366 U.S. 731 (1961), I conclude that it has met that burden in this case.

I have previously drawn the reasonable inference that the testimony of Linda Urbanski would not have been favorable to Respondent' claims of a majority showing. I have also concluded that Kramer very likely counted the cards of the five paid organizers. I also now conclude that while under Board law the votes of employees who sever their employment relationship on the day of a representation election are normally deemed valid, see e.g., *Choc-ola Bottlers, Inc*., 192 NLRB 1247 (1971), the circumstances here do not warrant the same result, primarily because the employer who is granting voluntary recognition is committing a fraud by accepting a result based upon the number of unit employees which he knows to be false. See *Tennessee Shell Co*., 212 NLRB 193, 200 (1974). In this case, furthermore, as I have noted, the union participant had full knowledge as well, and both parties failed to inform the third party on whom they relied to legitimize the entry of their relationship. Finally, and apart from the foregoing, it is evident that the five individuals hired on October 2, had no expectancy of future employment as they took the jobs solely to organize. As I conclude the five were temporary employees in any event, their cards should not have been counted by Arbitrator Kramer. See *Dee Knitting Mills, Inc*., 214 NLRB 1041 (1974).

Without the cards of the 5 paid organizers, Kramer was presented with only 48 other cards bearing signatures. He concluded that he had been submitted 53 valid signatures in a unit consisting of 102 employees. At trial, Local 1115 produced 60 cards which it had in its possession. By elimininating 7 of these cards, 4, because those of Bruce Baines, Kevin Barnes, David Bradley, and Ana Maria Pelaez contain printed names but not signatures on the signature line, 2 others because they are blank on the signature line, and 1 because signed by a self-described security officer, Sheryl Cuyler, we are left with 53, the same number Kramer lists as the tally of cards in his award.

Cuyler's name appears on a stipulated list of 107 unit employees of alleged unit employees employed for the payroll period ending October 7, the day following the card count.[13] The parties stipulated her name should be removed from the unit, thus leaving 106 names. This figure, of course, differs from Kramer's recital of 102 eligibles in the unit and the disparity remains unexplained on the record. In any event, even counting the cards of the five paid organizers, Local 1115 has failed to achieve a majority showing on the date of the card count and recognition.

Furthermore, certain other employees, including Thelma Riggins, a CNA hired for regular part work of 24 hours per week on September 28, and not terminated until December 11 for unreliability, and Marion Sajloski, previously injured and out on Worker's Compensation at the time of the count, were not included by the Respondents on the eligible list of unit employees, but should have been. See *J. P. Stevens & Co.*, 247 NLRB 420, 482 (1980), as to the unit inclusion for purpose of representation election of injured employees who have not resigned or been terminated. Sajloski actually returned to employment on November 6 and continued to work until March 19, 1990, when she was injured again and back on workers' compensation to the close of hearing.

Including these 2 employees in the bargaining unit further reduces 1115's card showing, assuming it to have been nontainted, to a total of 53 out of 108; 48 out of 108 when the cards of the 5 organizers are excluded.

Aside from the foregoing, it is apparent that the absence of any accurate and detailed records which Kramer reviewed, particularly since Kramer's figures vary significantly from

[12] Surely, if any disclosure had been made, Kramer would have commented upon it and felt obliged to determine their inclusion or exclusion from the unit.

[13] The transcript is ordered corrected at p. 678 to read that her name, mispelled as Coyler, is on the list.

the Respondent's unit claims as of the day of the count, further destroy any reliability of the count itself and buttresses further the conclusion that the parties' rush to recognition constitutes one element among the totality of surrounding facts establishing the unlawful grant of assistance by Windsor Castle to Local 1115.

Local 1115's own independent conduct contributed to the tainting of the cards and the receipt by it of unlawful aid and assistance.

On a number of occasions, as borne out by the record, Moore misrepresented to known 1199 adherents among employees, Tillman and Davis in particular, that 1119 couldn't help them because that union was in debt for 40 million dollars. Moore then compounded his misrepresentation by holding out himself and Local 1115 as 1199's approved successor, when he declared, e.g., to Davis ''these are the cards your supposed to sign. They sent 1115 instead.''

The confusion engendered among employees by those misrepresentations and the resulting unreliability of the cards signed by employees subject to such solicitations, coupled with the speed with which the Employer immediately granted recognition following the 5-day blitzkrieg and quickly thereafter concluded memorandum and complete agreements with little, outward evidence of negotiations, at a time when 1199 was known to be leafletting for employee support, also help establish the unlawful nature of the entry of the parties' relationship. *Franklin Convalescent Center*, 223 NLRB 1298, 1309 (1976); *Monfort of Colorado*, supra at 613.

In their rush to execute a final collective-bargaining agreement the parties agreed to a unit description at variance with the one described in Kramer's award, as amended. By including all employees and listing the named exclusions, the unit described in the contract is broad enough to include cooks. While both Respondents dispute that they ever intended to include cooks, an argument can be made that the unit as precisely described includes them. If cooks are included in the unit to which the parties agreed on the face of the agreement, 1115's minority status is further enhanced.

Certain facts and circumstances occurring after the execution of the collective-bargaining agreement further manifest a pattern of assistance and further support the conclusion that the grant of recognition on October 6 was unlawful.

Respondent offered no evidence disputing Davis' testimony that McSherry terminated Supervisor Anna Maxwell for showing favoritism to Davis and for not reporting on Davis' activities on behalf of Local 1199. Furthermore, at the ''emergency'' meeting of employees called on October 26, Fogel described the parties' union security clause as a ''closed shop'' requiring all new employees to ''join the Union . . . or termination may result.'' The subsequent actions of the parties confirm this unlawful interpretation of the contract clause.

Davis' unrebutted account of Fogel's' close questioning of her intent to honor the subpoena requiring her to testify at the representation proceeding establishes a threat of unspecified reprisal for exercising rights protected under the Act in violation of Section 8(a)(1). *Brookwood Furniture*, 258 NLRB 208, 210 (1981). Likewise, the unrebutted remarks Dave attributed to Urbanski in November that employees had lost a 50-cent-an-hour raise on completing probation because of unionization when that benefit had been previously due them under the Employer's practice and policies, constitutes a violation of Section 8(a)(1). Urbanki's reply to Davis' inquiry as to the failure to provide the raise was, ''Well, that's what happens when you get unions.''

On November 10, McSherry and Urbanski both committed violations of Section 8(a)(1) and Urbanski violated that section again on November 12 when they each instructed Hally not to honor her subpoena, *Travelways, Inc*., 267 NLRB 1332, 1336 (1983).

Respondent Windsor Castle's defense that Hally was a managerial employee is farfetched. In no respect did Hally assist in formulating policy regarding social work services supplied to patients nor did she effectuate management policies by ''running'' a single person department devoted to such services. See *NLRB v. Bell Aerospace Co*., 416 U.S. 267 (1974). She was the sole social worker on staff; calling her ''Director of Social Services'' did not enlarge her responsibilities in any real respect, none of which were of a significant discretionary nature. Neither was Hally privy to privileged labor relations matters by merely periodically attending department head meetings at which union negotiations were broached, and, thus, she could not be deemed thereby a confidential employee.

Fogel's conduct in interrogating Hally regarding her subpoena and proposed lines of questioning at the representation hearing exceeded permissive bounds of interrogation under the Act and was coercive, in spite of Fogel's uncalled for advise to Hally to tell the truth. See *Nestle Corp*., 248 NLRB 732 fn. 3, 740 (1980). By later expressing displeasure with her testimony and providing her with a revised job description as well as an amended copy of the minutes of the October 26 department head meeting Fogel intensified the coercive pressure on Hally to cease her protected conduct and brought home to at least one employee Windsor Castle's vitriolic opposition to District 1199 and unlawful support for Local 1115.

On February 8 Nelson Tuchman unlawfully threatened assembled employees that if they struck in support of 1199's 10-day strike notice, they would be fired. Tuchman misrepresented the law as requiring a 30-day notice to strike. In this situation Section 8(g) of the Act requires only a union to provide a 10-day notice prior to a strike. See *Hospital Employees District 1199*, 232 NLRB 443 (1977). Further, Tuchman's reliance on 1115's unlawful status as exclusive bargaining representative as precluding 1199's adherents from exercising their protected conduct to threaten to strike under the Act and threatening them with discharge if they did so, is another aspect of Tuchman's unlawful threat.

The conduct engaged in by 1115 agents Maritas and others the previous day, in threatening bodily harm to, 1199 adherents for exercising this right under the Act, to the extent of acting with contempt toward supervisory personnel who received no recourse or protection from McSherry, is part and parcel of the parties' conspiracy even if not separately alleged as an independent violation. These parallel acts by both Respondents show a scheme and willingness to intimidate employees and broach no opposition to their unlawful design.

In the spring and summer of 1990, employees were besieged by union and management to sign dues-checkoff authorizations and become members of 1115. Bucknall's May 24 letter to employees requiring dueschecksoffs and union membership as the price of their continued employment violated Section 8(a)(1) and (2) of the Act. *Siro Security Serv-*

ice, supra at 1273; *SMI of Worcester, Inc*., 271 NLRB 1508, 1524 (1984). Bucknall's attempt to correct the erroneous letter the following day was inadequate and unavailing. It failed to describe the unlawful requirements of the first and reasonably led employees to believe that Windsor Castle had delegated responsibility to 1115 to enforce the union-security clause but not necessarily to change its interpretation.

In September 1990, McSherry went so far as to call recalcitrant employees to her office to listen to Maritas who ''as the boss'' was ''handling things'' in a major effort to get employees to ''become and remain members in good standing'' as called for in both employer and union letters to employees.

The excessive final pressure applied to Banks by Maritas to sign the dues-checkoff card and to comply with the contractual ''closed shop'' clause, followed by Fogel's direction to Banks to sign the checkoff forms and join the Union, or be fired, establish a series of violations of the Act, running from 1115's unlawful demands, to Windsor Castle's accession to the demands, which constitute unlawful conduct by both regardless of the validity or invalidity of 1115's status as bargaining representative. *Siro's Security Service*, supra at 1273; *Rainey Security Agency*, 274 NLRB 269, 281 (1985); *Gloria's Manor Home for Adults*, 225 NLRB 1133, 1144 (1976).

CONCLUSIONS OF LAW

1. Respondent Employer, Windsor Castle Health Care Facilities, Inc. (formerly known as Parkview Nursing Home, Inc.), is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Union, 1115 Nursing Home and Hospital Employees Union, a Division of 1115 Joint Board and New England Health Care Employees Union, District 1199, SEIU, AFL–CIO, are each labor organizations within the meaning of Section 2(5) of the Act.

3. By encouraging and supporting agents of Respondent Local 1115 in that Union's efforts to solicit membership in Local 1115 and permitting Respondent Local 1115 to utilize the New Haven facility and Respondent Employer's equipment to solicit membership in Respondent Local 1115, and by recognizing and granting exclusive collective-bargaining rights to Local 1115 and entering into and maintaining and enforcing a collective-bargaining agreement covering rates of pay, wages, hours of employment, and other terms and conditions of employment, including a union-security provision, of its employees in the unit hereinafter described when said Union did not represent an uncoerced majority of the employees in the agreed-to unit of all employees, excluding licensed practical nurses, registered nurses, office and clerical employees, supervisors, watchmen and guards, Respondent Employer has rendered and is rendering unlawful assistance and support to a labor organization, in violation of Section 8(a)(1) and (2) of the Act.

4. By recognizing Respondent Local 1115 and by entering into, and thereafter maintaining and enforcing the collective-bargaining agreement under the circumstances as described in paragraph 3, above, Respondent Employer has discriminated, and is discriminating, in regard to the hire or tenure or terms or conditions of employment of its employees, thereby encouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

5. By discharging employee Harriet Banks because Respondent Local 1115 requested her discharge for refusing to pay union dues pursuant to the union-security provision described in paragraph 3, above, when Banks was under no obligation to do so, and because Banks refused to execute a dues-checkoff authorization on behalf of Local 1115 and refused to become and remain a member of Local 1115, Respondent Employer has unlawfully encouraged membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

6. By interrogating its employees concerning their union membership, activities, and sympathies and those of their fellow employees, and the nature and substance of testimony to be given to the National Labor Relations Board, by threatening its employees with unspecified reprisals or discharge if they appeared and gave testimony at the National Labor Relations Board or engaged in activities on behalf of District 1199, and by threatening its employees with discharge if they refused to become a member of, and execute a dues-checkoff card on behalf of, Respondent Local 1115, Respondent Employer has interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act.

7. By accepting exclusive recognition as the representative of Respondent Employer's employees in the agreed-to unit at a time when it did not represent an uncoerced majority of said employees; by verbal announcement and written communication, threatening employees with discharge if they refused to execute a dues-checkoff authorization; by informing employees that Respondent Employer was a closed shop; and by receiving aid, assistance, and support in the form of moneys which Respondent Employer deducted from the wages of the employees in the unit and remitted to it, Respondent Local 1115 has restrained and coerced, and is restraining and coercing, employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(b)(1)(A) of the Act.

8. By requesting that Respondent Employer discharge certain of its employees in the unit because they refused to execute a dues-checkoff authorization; and by requesting that Respondent Employer discharge employees Rochelle Ramsey and Harriet Banks because they refused to pay union dues when they were under no obligation to do so and because they refused to become and remain members of Local 1115, Respondent Local 1115 attempted to cause, and did cause, an employer to discriminate against its employees in violation of Section 8(a)(3) of the Act, thereby violating Section 8(b)(2) of the Act.

9. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

10. Respondents did not otherwise engage in violations of the Act.

THE REMEDY

Having found that both Respondents engaged in certain unfair labor practices, in violation of Section 8(a)(1), (2), and (3) and Section 8(b)(1)(A) and (2), I shall recommend that they cease and desist therefrom and that they take the following affirmative actions which are necessary to effectuate the policies of the Act.

I have found that the Respondent Employer unlawfully assisted Respondent Union to organize its employees and recognized Respondent Union on October 6, 1989, as the exclusive collective-bargaining representative of certain of its employees in an agreed-to unit and that Respondent Union accepted such recognition as the exclusive representative of said employees at a time when Respondent Union had not been designated or selected as the collective-bargaining representative of an uncoerced majority of said employees. By such conduct, Respondent Employer has interfered with, restrained, and coerced its employees in the exercise of their right freely to select their own bargaining representative, and has accorded unlawful assistance and support to Respondent Union and Respondent Union has restrained and coerced said employees in the exercise of those same rights. In order to dissipate the effect of these unfair labor practices, Respondent Employer shall withdraw and withhold recognition from Respondent Union as the exclusive representative of its employees in the aforementioned unit and Respondent Union shall cease maintaining or giving effect to its current recognition by Respondent Employer, or any renewal or extension thereof, until such time as Respondent Union shall have been certified by the Board as the exclusive representative of the employees in question. Both Respondents shall also cease maintaining or giving effect to any collective-bargaining agreement between them, or any successor thereto, concerning the employees in the described unit, unless and until such time as Respondent Union shall have been certified by the Board, provided, however, nothing in the remedial order shall require Respondent Employer to withdraw or eliminate any wage increase or other benefit, terms, and conditions of employment which may have been established pursuant to any such agreement.

By virtue of the fact that the Respondents have given effect to an invalid union-security provision requiring payment of union dues as a condition of employment or continued employment and that the clause has also improperly authorized checkoff of union dues from the pay of unit employees, I will also recommend that Respondent Employer and Respondent Union, jointly and severally, be required to reimburse all Respondent Employers employees for fees and moneys deducted from their pay in requiring them to execute union application and checkoff authorization cards on behalf of Respondent Union, with interest added to such reimbursements in the manner prescribed in *Florida Steel Corp*., 231 NLRB 651 (1977), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found that Respondent Employer discriminatorily discharged Harriet Banks on or about January 28, 1991, in violation of Section 8(a)(3) and (1) of the Act, and that Respondent Union caused such discrimination, thereby violating Section 8(b)(2) and (1)(A) of the Act, I shall also recommend that Respondent Employer offer Harriet Banks immediate and full reinstatement to her former position or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and, jointly and severally with Respondent Union, make her whole for any losses she may have suffered as a result of the discrimination against her, with interest also to be computed in the manner prescribed in *Florida Steel Corp*., 231 NLRB 651 (1977), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondents' violation of law in this case are of such a pervasive nature which go to the very heart of the Act, I shall also recommend broad cease and desist language in their required undertakings to cease and desist from in any manner infringing on the rights guaranteed to the Respondent Employer's employees by Section 7 of the Act. *Franklin Convalescent Center*, supra at 1298 fn. 2; *NLRB v Entwistle Mfg. Co*., 120 F.2d 532, 536 (4th Cir. 1941).

On these findings of fact and conclusions of law and on the entire record in this proceeding, I issue the following recommended

ORDER[14]

A. The Respondent, Windsor Castle Health Care Facilities, Inc. (formerly known as Parkview Nursing Home, Inc.), its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Assisting or contributing support to Respondent Local 1115 by helping in the organization of its employees or by recognizing and granting exclusive collective-bargaining rights to Local 1115 unless and until Local 1115 is certified by the Board as the collective-bargaining representative of said employees pursuant to Section 9(c) of the Act.

(b) Maintaining or giving any force or effect to the collective-bargaining agreement between Respondent Employer and Respondent Local 1115 dated October 16, 1989, covering rates of pay, wages, hours of employment, and other terms and conditions of employment, including a union-security provision, of its employees in an agreed to unit at its New Haven facility, or any modification or current extension thereof, unless and until Respondent Local 1115 is certified by the Board as the collective-bargaining representative of said employees pursuant to Section 9(c) of the Act; provided, however, that nothing in this order shall require the withdrawal or elimination of any wage increase or other benefits, terms or conditions of employment which may have been established pursuant to the performance of said contract.

(b) Discharging or in any other manner discriminating against its employees in regard to their hire or tenure of employment or any terms or conditions of employment in order to encourage membership in Respondent Local 1115 or any other labor organization or in order to discourage membership in District 1199 or any other labor organization.

(c) Interrogating its employees concerning their union membership, activities and sympathies, and the nature and substance of testimony to be given to the National Labor Relations Board, threatening its employees with unspecified reprisals or discharge if they appeared it gave testimony at the Board or engaged in activities on behalf of District 1199 or if they refused to become a member of, and execute a duesoff check card on behalf of, Respondent Local 1115.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist District 1199 or any labor organization, to bargain collectively through representatives of their own choosing, and to engage

[14] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

in other concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from any and all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and withhold all recognition from Respondent Local 1115 as the collective-bargaining representative of its employees employed at its New Haven, Connecticut facility, unless and until said labor organization has been duly certified by the National Labor Relations Board as the exclusive representative of such employees.

(b) Jointly and severally, with Respondent Union reimburse its past and present employees, for all dues and other moneys withheld from their pay pursuant to the collective-bargaining agreement executed on October 16, 1989, by Respondents, or any successor agreement thereto, plus interest, in the manner set forth herein in the remedy section.

(c) Offer Harriet Banks immediate and full reinstatement to her former position or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges, and, jointly and severally, with Respondent Local 1115, make her whole for any loss of earnings she may have suffered as a result of her discharge, in the manner set forth herein in the remedy section.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records an reports, and all other records necessary to analyze the amount of reimbursement of dues, other moneys, and backpay due under the terms of this Order.

(e) Post at its facility in New Haven, Connecticut, copies of the attached notice marked ''Appendix A.''[15] Copies of said notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent Employer's representative, shall be posted by Respondent Employer immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent Employer to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Post at the same places and under the same conditions set forth in (e) above, as they are forwarded by the Regional Director, copies of Respondent Local 1115's notice marked ''Appendix B.''

(g) Mail signed copies of the attached notice marked Appendix A for posting at Respondent Local 1115's offices and meeting halls.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Employer has taken to comply.

[15] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

B. Respondent, 1115 Nursing Home and Hospital Employees Union, a Division of 1115 Joint Board, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Accepting exclusive recognition as the representative of Respondent Employer's employees at the facility located in New Haven, Connecticut, or entering into a collective-bargaining with Respondent Employer as the exclusive representative of those employees at a time when Respondent Union does not represent an uncoerced majority of employees in an appropriate bargaining unit.

(b) Acting as the exclusive collective-bargaining representative of the employees in an agreed-to unit employed by Respondent Employer at its New Haven, Connecticut facility, unless and until Respondent Union has been certified by the National Labor Relations Board as the exclusive bargaining representative of such employees in an appropriate bargaining unit.

(c) Giving effect to the October 6, 1989 recognition agreement, or the October 16, 1989 collective-bargaining agreement executed by Respondents, and any modifications of current extensions thereof.

(d) Causing or attempting to cause Respondent Employer or any other employer to discharge or in any other manner discriminate against its employees in regard to their hire or tenure of employment or any term of condition of employment in order to encourage membership in Respondent Local 1115 or any other labor organization or in order to discourage membership in District 1199 or any other labor organization.

(e) Restraining or coercing employees by threatening them with discharge if they refused to execute a dues-checkoff authorization, by informing employees that the Respondent Employer was a closed shop, and by falsely telling employees that they are required to join Respondent Local 1115 as a condition of continued employment.

(f) In any other manner restraining or coercing the Respondent Employer's employees in the exercise of the rights guaranteed them in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Jointly and severally with Respondent Employer reimburse its employees, for all dues and fees withheld from their pay pursuant to the collective-bargaining agreement executed on October 16, 1989, by Respondents covering Respondents Employer's employees in an agreed-to unit at its New Haven, Connecticut facility, or any modification or current extension thereof, plus interest, in the manner set forth in the the remedy section.

(b) Jointly and severally with Respondent Employer, make Harriet Banks whole for any loss of earning she may have suffered as a result of her discharge, plus interest, in the manner set forth herein in the the remedy section.

(c) Notify Harriet Banks and Respondent Employer in writing that it has no objection to the employment of Harriet Banks and request her reinstatement.

(d) Post at its offices and meeting halls copies of the attached notice marked ''Appendix B.''[16] Copies of said notice on forms provided by the Regional Director for Region 34, after being signed by Respondent's Local 1115's representative shall be posted by Respondent Local 1115 immediately on receipt and be maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Local 1115 to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Post at the same places and under the same conditions as set forth in (b) above, as they are forwarded by the Regional Director, copies of Respondent Employer's notice marked ''Appendix A.''

(f) Mail signed copies of the attached notice marked ''Appendix B'' to the Regional Director for posting at Respondent Employer's New Haven, Connecticut facility.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

All other allegations of the consolidated complaint not disposed of by the settlement agreement and not specifically found to constitute unfair labor practices in violation of the Act are hereby dismissed.

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT assist or contribute support to 1115 Nursing Home and Hospital Employees Union, a Division of 1115 Joint Board, or any other labor organization, by assisting it to organize our employees or by recognizing it as the exclusive collective-bargaining representative of our employees unless and until it has been certified as such representative by the National Labor Relations Board.

WE WILL NOT maintain or give effect to our contract with Local 1115 executed on October 16, 1989, or any modification, extension, or renewal thereof, or any other contract, agreement, or understanding entered into with such labor organization, or any successor thereto, relating to rates of pay, wages, hours of employment and other terms and conditions of employment, including a union-security provision, unless and until it has been certified as representative of our employees by the the Board; provided, however that nothing herein shall require the withdrawal or elimination of any wage increase or other benefits, terms or conditions of employment which may have been established pursuant to the performance of said contract.

WE WILL NOT threaten our employees with unspecified reprisals or discharge, by telling them that they must join Local 1115 or any other labor organization as a condition of employment, or if they gave testimony at the Board, engaged in activities on behalf of New England Health Care Employees Union, District 1199, SEIU, AFL–CIO, or refused to become a member of Local 1115, or execute its dues-checkoff card and WE WILL NOT interrogate our employees concerning their union membership, activities and desires, or the nature and substance of testimony to be given to the Board.

WE WILL NOT encourage membership in Local 1115, or any other labor organization, or discourage membership in, or activities on behalf of, District 1199, or any other labor organization, by discharging or in any other manner discriminating against our employees in regard to their hire or tenure of employment or any terms or conditions of employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their rights to self-organization, to form labor organizations to join or assist District 1199, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in any or all such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor Management Reporting and Disclosure Act of 1959.

WE WILL withdraw and withhold all recognition from Local 1115 as the collective-bargaining representative of our employees.

WE WILL, jointly and severally with Local 1115, reimburse our past and present employees for all dues and other moneys withheld from their pay pursuant to the collective-bargaining agreement we executed on October 16, 1989, with Local 1115, or any successor agreement, plus interest.

WE WILL offer Harriet Banks immediate and full reinstatement to her former position, or if that job no longer exists, to a substantial equivalent position, without prejudice to her seniority or other rights and privileges, and jointly and severally with Local 1115, make her whole for any loss of earnings she may have suffered because of her discharge, plus interest.

WINDSOR CASTLE HEALTH CARE FACILITIES, INC. (FORMERLY KNOWN AS PARKVIEW NURSING HOME, INC.)